

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 22, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP226

Cir. Ct. No. 2012ME568

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE MENTAL COMMITMENT OF GINA A. R.:

WINNEBAGO COUNTY,

PETITIONER-RESPONDENT,

V.

GINA A. R.,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Winnebago County:
THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 REILLY, J.¹ Gina A. R. appeals from orders for her commitment and involuntary medication and treatment. Gina argues that the orders were improper as she does not suffer from a mental illness and is not a danger to herself or others. We affirm the circuit court.²

BACKGROUND

¶2 At the final hearing on Gina's commitment, a court-appointed psychiatrist testified that, in his expert opinion, Gina suffers from a major mental illness known as schizoaffective disorder, she was a proper subject for treatment, and she posed a danger to herself and others. The psychiatrist also testified that he had explained the advantages and disadvantages of and alternatives to treatment with Gina, and he opined that she was incompetent to make an informed choice regarding her medication. After the psychiatrist's testimony, Gina made a short statement to the court in which she called the proceedings an "injustice," told the court that it was "doing a very, very bad thing here" and it was making "an unfair judgment," but did not otherwise dispute the psychiatrist's testimony. No other testimony was provided at the hearing.³

¶3 The court found that the County had met its burden in proving that Gina suffered from a major mental illness, was a proper subject for treatment, and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

² The record indicates that Hon. Thomas J. Gritton was assigned as presiding judge for the final hearing. The orders that Gina appeals were signed by Hon. Daniel J. Bissett "for Thomas Gritton."

³ Although Gina gave a brief statement, she was not a sworn witness who provided testimony. Gina also was allowed to ask questions of the psychiatrist and occasionally spoke during the hearing without authorization from the court.

“presented a substantial capability of harming herself based on recent acts” where she threatened to harm herself. The court also found that Gina was not capable of making an informed choice about whether to accept or refuse medication after she had been explained the advantages and disadvantages of and alternatives to medication. The court ordered that Gina be committed for six months and that she be administered medication and treatment regardless of her consent. Gina appeals.

DISCUSSION

¶4 Gina argues that the circuit court erred as she does not suffer from a major mental illness and she does not pose a threat of harm to herself or others.⁴ We consider Gina’s appeal to be a challenge to the sufficiency of the evidence that she meets the WIS. STAT. ch. 51 requirements for commitment and involuntary medication and treatment. On review, we will overturn the circuit court’s findings of fact only if they are clearly erroneous. *K.N.K. v. Buhler*, 139 Wis. 2d 190, 198, 407 N.W.2d 281 (Ct. App. 1987). We review independently the application of those facts to the statutory requirements. *Id.*

Commitment Order

¶5 Before a court may place a person under a commitment order, it must be satisfied by clear and convincing evidence that the person is mentally ill, a proper subject for treatment, and dangerous. WIS. STAT. § 51.20(1)(a)1., 2., (13)(a)3., (e). A person is dangerous for the purpose of commitment if he or she “[e]vidences a substantial probability of physical harm to himself or herself as

⁴ Gina was represented by counsel before the circuit court. She declined representation on appeal and proceeded pro se, which we approved in an earlier order.

manifested by evidence of recent threats of or attempts at suicide or serious bodily harm.” Sec. 51.20(1)(a)2.a.

¶6 Gina spends much of her brief discussing facts not in the record. She self-diagnoses, represents that she eats well and supports herself, attempts to explain recent circumstances leading to her commitment, and promises to consider seeing a psychologist or counselor in the future. We will not consider facts raised in her brief that were not introduced in the proceedings before the circuit court. *See Onderdonk v. Lamb*, 79 Wis. 2d 241, 249, 255 N.W.2d 507 (1977). We will not retry this case on appeal. *Maclin v. State*, 92 Wis. 2d 323, 332, 284 N.W.2d 661 (1979). The undisputed facts before the circuit court were that Gina suffers from schizoaffective disorder and she had recently expressed suicidal thoughts to others.⁵ Combined with the psychiatrist’s expert opinion that Gina was a proper subject for treatment, the circuit court had sufficient evidence to support Gina’s commitment.

Involuntary Medication and Treatment Order

¶7 A committed person may be administered medication and treatment involuntarily if, after having been explained “the advantages and disadvantages of and alternatives to accepting the particular medication or treatment ... [t]he individual is incapable of expressing an understanding of the advantages and disadvantages of accepting medication or treatment and the alternatives.” WIS. STAT. § 51.61(1)(g)4.a. The burden is on the petitioner to prove with clear and

⁵ When given a chance to question the psychiatrist who testified that Gina had told him she did not want to live and had stopped eating, Gina instead told the court, “I want to live forever, okay? ... I never want to die. I want to live. I always want to live.” She did not dispute the psychiatrist’s testimony that she had recently told others something to the contrary.

convincing evidence that the person is incompetent. *See* WIS. STAT. § 51.20(13)(e).

¶8 On appeal, Gina appears to rely on her assertion that she does not suffer from a mental illness to attack the order for her involuntary medication and treatment. Gina’s argument fails as we already have found that the order for her commitment was proper. Further, the County met its burden through the psychiatrist’s testimony that Gina was incompetent to refuse medication. Gina’s own statements to the circuit court supported its finding that she did not understand the advantages and disadvantages of and alternatives to treatment and medication such as to make an informed decision. In particular, Gina showed no ability to analyze the appropriateness of medication and treatment when she asserted that “[s]hots and medications without my authorization, that’s killing people, okay?” We agree with the court’s determination that Gina was incapable of expressing an understanding of the advantages and disadvantages of accepting medication and its alternatives.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

